

TUESDAY, JULY 10, 2001

The Board met at its offices at 5901 Green Valley Circle, Culver City, at 9:00 a.m. with Chairman Parrish, Vice Chairman Chiang, Mr. Klehs and Mr. Andal present, Ms. Mandel present on behalf of Dr. Connell in accordance with Government Code Section 7.9.

### **LEGAL APPEALS MATTERS, ADJUDICATORY**

Oracle Corporation, SR Y BHA 026-705155; 89000652330  
7-1-89 to 12-31-92, \$941,563.24 Tax, \$94,156.28 Penalty, Negligence  
Considered by the Board: Hearing Notice Sent – Appearance Waived  
Action: The Board deferred consideration of this matter.

### **LEGAL APPEALS MATTERS, CONSENT**

The Board deferred consideration of the following matters: *Lightning Dubbs, Inc.*, SR AS 11-797620; 32799, *Jacob Lincoln Ribis*, SR AC 13-751368; 89000072760, *Sidney L. & Michiko Soffer*, SR EAA 24-926310; 89000492790.

With respect to the Legal Appeals Matters, Consent Agenda, upon a single motion of Mr. Chiang, seconded by Mr. Andal and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board made the following orders:

Naushad Akbarali Moosa, SR AB 99-388827; 16677  
10-1-94 to 3-31-98, \$00.00 Tax, \$5,608.09 Penalty, Negligence  
Action: Redetermine as recommended by Appeals Section.

Lightning Dubbs, Inc., SR AS 11-797620; 32799  
1-1-95 to 12-31-97, \$00.00 Tax, \$10,770.73 Penalty Negligence  
Action: The Board took no action.

Jacob Lincoln Ribis, SR AC 13-751368; 89000072760  
10-1-94 to 9-30-97, \$11,143.32 Tax, \$00.00 Penalty, Negligence  
Action: The Board took no action.

Able Cable, Inc., SR AC 13-811127; 89000081470  
7-1-94 to 6-30-97, \$19,357.31 Tax, \$00.00 Penalty, Negligence  
\$1,932.65 Penalty, Finality  
Action: Redetermine as recommended by Appeals Section.

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Overseas East West, Inc., SR AB 14-788514; 89000133050  
7-1-92 to 6-30-96, \$37,624.79 Tax, \$58,563.37 Penalty, Fraud  
Action: Redetermine as recommended by Appeals Section.

Morton Engineering & Construction, Inc., SR ARH 22-691081; 30213  
7-1-95 to 6-30-98, \$36,642.88 Tax, \$3,645.74 Penalty, Negligence  
Action: Redetermine as recommended by Appeals Section.

Sidney L. & Michiko Soffer, SR EAA 24-926310; 89000492790  
4-1-93 to 4-30-96, \$172,398.64 Tax, \$17,239.89 Penalty, Negligence  
Action: The Board took no action.

Gold Prospectors Association, Inc., SR EH 25-830344; 89000578640  
7-1-93 to 6-30-96, \$26,231.48 Tax, \$00.00 Penalty, Failure to Pay Timely  
Action: Redetermine as recommended by Appeals Section.

Nadia Hassan Ebrahim, TK MT 44-039128; 32344  
6-1-95 to 12-31-98, \$15,448.69 Fee, \$1,544.88 Penalty, Failure to File  
Action: Redetermine as recommended by Appeals Section.

James M. Richards and Parvez Gondal, SB UT 84-004206; 62774  
8-31-99, \$4,950.00 Tax  
Action: Redetermine as recommended by Appeals Section.

Hassan Jalali & Gholam Hossein Jalali, SR AC 99-446628; 89002258660  
1-1-93 to 12-31-97, \$68,008.83 Tax, \$17,002.32 Penalty, Fraud  
Action: Redetermine as recommended by Appeals Section.

Mohamed A. Mandour, SR EH 99-651810; 16292  
3-1-95 to 12-31-97, \$17,816.01 Tax, \$3,158.80 Penalty, Finality  
\$ 00.00 Penalty, Negligence  
Action: Redetermine as recommended by Appeals Section.

Carepoint Health Services, Inc., SR AC 99-660123; 49969  
10-1-95 to 3-31-99, \$698,964.59 Tax  
Action: Redetermine as recommended by Appeals Section.

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Carrie Lynn Solomon, SR EH 99-784952; 50420

1-1-96 to 12-31-98, \$13,360.35 Tax

Action: Redetermine as recommended by Appeals Section.

Mario Joseph Triolo, SR AP 99-827824; 59267

10-1-96 to 9-30-99, \$00.00 Tax, \$00.00 Penalty, Negligence

Action: Redetermine as recommended by Appeals Section.

Voyager Marine, LLC, SR AS 99-975534; 89002452270

1-1-94 to 12-31-96, \$54,414.59 Tax, \$00.00 Penalty, Finality

Action: Redetermine as recommended by Appeals Section.

Advanced Chem Tech, Inc., SC OHA 99-998959; 19516

4-30-93 to 6-30-98, \$19,744.89 Tax, \$00.00 Penalty, Failure to File

Action: Redetermine as recommended by Appeals Section.

Jorge A. & Graciela S. Schneider, SR AC 13-618222; 15441

4-1-95 to 3-31-98, \$11,263.98 Tax

Action: Redetermine as recommended by Appeals Section.

FHP, Inc., SR X EA 16-629217; 89000181720, -710

1-1-93 to 12-31-95, \$560,526.74 Tax, \$56,052.71 Penalty, Negligence

Action: Redetermine as recommended by Appeals Section.

Michael Wesley Daily & Sharon Lee Daily, SR EA 99-199771; 15120

1-1-95 to 6-30-98, \$3,981.49 Tax

Action: Redetermine as recommended by Appeals Section.

Phillip G. Hagar & Velma Shropshire, SA UT 82-677125; 34332

4-30-98, \$1,282.48 Tax Credit

Action: Redetermine as recommended by Appeals Section.

Luna Restaurant Corporation, SR AS 99-846741; 89002414870

7-1-95 to 3-31-98, \$00.00 Tax, \$00.00 Penalty, Negligence

Action: Redetermine as recommended by Appeals Section.

James T. & Tresa Chris Shaw, SR AB 16-653118; 89000183840

4-1-93 to 3-31-96, \$00.00 Tax, \$00.00 Penalty, Negligence

Action: Redetermine as recommended by Appeals Section.

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Empire Ford New Holland, Inc., SR EH 23-870157; 89000431300  
4-1-95 to 3-31-98, \$00.00 Tax, \$00.00 Penalty  
Western Equipment Outfitters, Inc., SR EH 99-238553; 89002162080  
7-1-95 to 6-30-98, \$00.00 Tax, \$00.00 Penalty  
Action: Redetermine as recommended by Appeals Section.

Michelle Lynn Adams, SR EHC 23-881580; 89000434460  
4-1-94 to 3-31-97, \$6,419.74 Tax  
David K. Adams, SR EHC 53-000349; 89000970320  
4-1-94 to 3-31-97, \$6,419.74 Tax  
Action: Redetermine as recommended by the Appeals Section

**FRANCHISE AND INCOME TAX MATTERS, CONSENT**

The Board deferred the following matters: *Paul Haggis, 78952.*

With respect to the Franchise & Income Tax Matters, Consent Agenda, upon a single motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board made the following orders:

Paul Haggis, 78952  
1992, \$5,919.00 Assessment  
Action: The Board took no action.  
Lyndha E. Evensen, 87447  
1989, \$925.80 Assessment, \$209.50 Penalty, Delinquent  
\$231.45 Penalty, Failure to Furnish Information  
\$ 46.29 Penalty, Negligence  
Action: Sustain the action of the Franchise Tax Board.

William Bailey, 88462  
1995, \$1.00 or more Assessment  
Action: Sustain the action of the Franchise Tax Board.

Anthony & Kathryn Thomas, 88668  
1996, \$551.00 Assessment  
Action: Sustain the action of the Franchise Tax Board.

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Johan H. G. (Deceased) & Ingeborg Maters, 90047

1996, \$1,133.29 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Raymond D. & Rosamund L. Allison, 90072

1992, \$180.00 Assessment, \$8.00 Penalty, Late Filing

Action: Sustain the action of the Franchise Tax Board.

Daniel J. Flynn, 90735

1989, \$877.00 Assessment

Action: Dismiss the appeal for lack of jurisdiction.

Julie M. Guidance, 91409

1998, \$425.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Walter Y. Josephson, Jr., 91419

1996, \$920.75 Claim for Refund

Action: Reverse the action of the Franchise Tax Board.

C.M.F. VanGaasbeck, 91730

1996, \$83.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Timothy J. Bettner, 91979

1998, \$939.00 Assessment

Action: Sustain the action of the Franchise Tax Board and impose a \$750.00 frivolous appeal penalty.

Bowne of Los Angeles, Inc., 93373

1994, \$124,288.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Rabi R. Maharaj, 93409

1998, \$1,582.00 Assessment, \$395.50 Penalty, Late Filing

\$395.50 Penalty, Failure to File

Action: Sustain the action of the Franchise Tax Board.

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Jeffrey Jemmottt, 94362

1998, \$1,179.00 Assessment, \$294.75 Penalty, Late Filing  
\$614.25 Penalty, Notice and Demand  
\$ 69.00 Filing Enforcement Fee

Action: Sustain the action of the Franchise Tax Board.

Timothy S. Moore &amp; Maureen M. McMahon, 97701

1996, \$1,490.00 Assessment

Action: Reverse the action of the Franchise Tax Board.

Scott A. &amp; Michelle L. Bennett, 99933

1997, \$1,756.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Robert W. Grate, 99A-0262, 89002468700

1990, \$23,319.00 Assessment, \$5,829.75 Penalty, Delinquent

Action: Sustain the modified action of the Franchise Tax Board.

LaVonne A. Hodgson, 47679

1994, \$4,454.00 Assessment, \$2,227.00 Penalties

Action: Grant the petition for rehearing.

**HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE MATTERS,  
CONSENT**

With respect to the Homeowner and Renter Property Tax Assistance Matters, Consent Agenda, upon a single motion of Mr. Klehs, seconded by Mr. Chiang and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board made the following orders:

Zoe E. Bolton-Good, 93517

2000, \$235.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Linda Brown, 93528

2000, \$600.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

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Alice M. Cornwell, 97908  
2000, \$200.00 Claim for Credit  
Action: Sustain the action of the Franchise Tax Board.

Clifford Jones, 99839  
2000, \$1.00 or more Claim for Credit  
Action: Sustain the action of the Franchise Tax Board.

Robert Deimel, 100769  
2000, \$272.10 Claim for Credit  
Action: Sustain the action of the Franchise Tax Board.

Barbara E. Guido, 100908  
2000, \$190.00 Claim for Credit  
Action: Sustain the action of the Franchise Tax Board.

Sean Michael Elliott, 101137  
2000, \$600.00 Claim for Credit  
Action: Sustain the action of the Franchise Tax Board.

Rose M. Davis, 102875  
2000, \$50.00 Claim for Credit  
Action: Sustain the action of the Franchise Tax Board.

**SALES AND USE TAX MATTERS, CREDITS, CANCELLATIONS AND  
REFUNDS, CONSENT**

With respect to the Sales and Use Tax Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board made the following orders:

Joseph L. Pinela, SR AA 012-635884; 116831  
7-1-96 to 6-30-99, \$139,319.58  
Action: Approved credit and cancellation as recommended by staff.

Projection Video Services Inc., SR Z OHB 030-666875; 119517  
4-1-00 to 9-30-00, \$168,108.11  
Action: Approved credit and cancellation as recommended by staff.

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Certified Marine Expeditions, SB R UT 082-679991; 91368  
8-1-98, \$509,822.15

Action:           Approved credit and cancellation as recommended by staff.

Madison/Graham Color Graphics Inc., SR Y AA 011-255519; 56910  
10-1-96 to 3-31-00, \$446,738.28

Action:           Approve refund as recommended by staff.

Winner-Clippinger Associates, Inc., SR AS 011-298190; 40986  
7-1-96 to 3-31-00, \$64,251.68

Action:           Approve refund as recommended by staff.

Magidell Enterprises, Inc., SR AC 012-623410; 60386  
1-1-97 to 9-30-00, \$121,677.59

Action:           Approve refund as recommended by staff.

Trend Offset Printing Services, Inc., SR EA 014-716359; 89000118690  
7-1-96 to 9-30-00, \$250,782.45

Action:           Approve refund as recommended by staff.

Vidfilm Services Inc., SR AP 017-709315; 79084  
4-1-97 to 12-31-98, \$58,590.16

Action:           Approve refund as recommended by staff.

Cynthia M. Renie, SR AC 018-744718; 89000250100  
1-1-96 to 4-30-00, \$219,573.46

Action:           Approve refund as recommended by staff.

Saint Jude Hospital, SR EA 024-115370; 83246  
4-1-97 to 6-30-00, \$270,952.47

Action:           Approve refund as recommended by staff.

Bel Air Mart, SR Y JHF 028-045379; 110532  
1-9-00 to 4-1-00, \$232,209.66

Action:           Approve refund as recommended by staff.

Rankin & Rankin Inc., SR S KH 028-768197; 116535  
10-1-97 to 9-30-00, \$216,866.04

Action:           Approve refund as recommended by staff.



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Digital Equipment Corporation, SR S OHB 030-603292; 88742  
7-1-99 to 12-31-99, \$971,352.53

Action: Approve refund as recommended by staff.

Rational Software Corporation, SR Y GH 030-689826; 119018  
1-1-97 to 12-31-99, \$72,821.37

Action: Approve refund as recommended by staff.

Computer Professionals Inc., SC OHC 030-696326; 104734  
4-1-00 to 6-30-00, \$87,243.07

Action: Approve refund as recommended by staff.

Thiel Structural Steel Inc., SR S KHE 041-631780; 116770  
10-1-97 to 6-30-00, \$56,610.52

Action: Approve refund as recommended by staff.

Cargotec, Inc., SC OHA 097-026405; 83241  
1-1-99 to 6-30-00, \$97,635.57

Action: Approve refund as recommended by staff.

Optical Disc Media, Inc., SR AC 097-110001; 75819  
1-1-98 to 9-30-00, \$100,472.99

Action: Approve refund as recommended by staff.

Avanex Corporation, SR CHA 097-205975; 111718  
1-1-00 to 3-31-00, \$64,161.95

Action: Approve refund as recommended by staff.

Federal Employees Distributing Company, SR Y AA 098-019239; 104738  
1-1-00 to 3-1-00, \$288,318.58

Action: Approve refund as recommended by staff.

Nalco Chemical Company, SR Z OHA 098-040071; 112116  
7-1-99 to 9-30-99, \$189,959.82

Action: Approve refund as recommended by staff.

Mitsubishi Caterpillar Forklift America, Inc., SC OHC 099-176228; 80557  
7-1-99 to 3-31-00, \$173,150.37

Action: Approve refund as recommended by staff.

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K & E Marketing by Design, Inc., SR AC 099-679007; 37492  
7-1-96 to 6-30-99, \$189,635.53

Action: Approve refund as recommended by staff.

John F. Forest Design, Inc., SR AA 099-773542; 116848  
10-1-97 to 9-30-00, \$67,005.44

Action: Approve refund as recommended by staff.

Avocet Tungsten Inc., SR ARH 099-806174; 94328  
7-1-00 to 9-30-00, \$122,665.71

Action: Approve refund as recommended by staff.

Minerva Plastics, Inc., SR S OHC 099-814050; 111717  
4-1-00 to 12-31-00, \$110,760.20

Action: Approve refund as recommended by staff.

Green Valley Gas Corporation, SR GHD 099-831781; 104743  
4-1-98 to 4-24-00, \$53,871.95

Action: Approve refund as recommended by staff.

JD Edwards World Solutions Company, SR Z OH 099-994614; 112110  
4-1-00 to 6-30-00, \$160,595.37

Action: Approve refund as recommended by staff.

### **SALES AND USE TAX MATTERS, REDETERMINATIONS AND DENIALS OF CLAIMS FOR REFUND, CONSENT**

With respect to the Sales and Use Tax Matters, Redeterminations and Denials of Claims for Refund, Consent Agenda, upon a single motion of Mr. Klehs, seconded by Mr. Parrish and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board made the following orders:

Hertz Equipment Rental Corporation, SR Y OHB 024-609871; 61852  
1-1-96 to 12-31-98, \$642,606.77

Action: Redetermine as recommended by staff.

Southwest Marine Inc., SR Y FH 025-680914; 89000526230  
4-1-94 to 9-30-97, \$157,281.38

Action: Redetermine as recommended by staff.

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Network Computing Devices, Inc., SR Y GH 026-796562; 89000676990  
7-1-93 to 9-30-96, \$188,259.72

Action: Redetermine as recommended by staff.

W & W Steel Company, SR S OHC 030-641060; 119450  
10-1-95 to 3-31-96, \$118,108.20

Action: Redetermine as recommended by staff.

Learjet Inc., SR S OHA 030-699818; 89000884130  
4-1-94 to 6-30-97, \$100,234.15

Action: Redetermine as recommended by staff.

Maguire Aviation Inc., SP H UT 082-626990; 89001108480  
6-24-94, \$825,000.00

Action: Redetermine as recommended by staff.

Aero Leasing, SP P UT 084-006383; 98113  
9-28-93, \$62,775.00

Action: Redetermine as recommended by staff.

Aero Leasing, SP P UT 084-006384; 114761  
10-11-90, \$54,675.00

Action: Redetermine as recommended by staff.

Aero Leasing, SP P UT 084-006391; 98115  
5-13-94, \$67,425.00

Action: Redetermine as recommended by staff.

Sunfish Acquisitions Ltd., SP H UT 084-012334; 110669  
4-30-99, \$676,500.00

Action: Redetermine as recommended by staff.

LGT Aviation Inc., SP H UT 084-016548; 99268  
10-15-99, \$385,687.50

Action: Redetermine as recommended by staff.

Frank L. Flynn, SB G UT 084-020856; 116005  
12-27-99, \$106,562.50

Action: Redetermine as recommended by staff.

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Southeastern Brokerage, SC OHC 097-508937; 37127  
7-1-91 to 12-31-98, \$74,928.90

Action: Redetermine as recommended by staff.

Hobas Pipe USA, Inc., SC OHC 099-246530; 41975  
1-1-96 to 12-31-98, \$129,691.71

Action: Redetermine as recommended by staff.

Engelhard Corporation, SR S OHB 099-535810; 41878  
7-1-91 to 6-30-98, \$1,154,299.01

Action: Redetermine as recommended by staff.

ADAC Laboratories, SR GH 026-641379; 80566  
4-1-97 to 9-30-97, \$125,591.57

Action: Deny of claim for refund as recommended by staff.

### **SPECIAL TAXES MATTERS, CREDITS, CANCELLATIONS AND REFUNDS, CONSENT**

With respect to the Special Taxes Matters, Credits, Cancellations and Refunds, Consent Agenda,, upon a single motion of Mr. Chiang, seconded by Mr. Parrish and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs and Mr. Andal voting yes, Ms. Mandel not participating in accordance with Government Code Section 7.9, the Board made the following orders:

21<sup>st</sup> Century Insurance Company, IT ET 034-001953; 57224  
1-1-95 to 12-31-95, \$333,745.30

Action: Approve the refund as recommended by staff. Ms. Mandel not participating.

William F. Galtney, Jr., IB ET 060-000330; 97911  
1-1-98 to 12-31-98, \$98,024.73

Action: Approve the refund as recommended by staff. Ms. Mandel not participating.

William J. Rese, Jr., IB ET 060-00376; 97900  
1-1-97 to 12-31-97, \$240,285.45

Action: Approve the refund as recommended by staff. Ms. Mandel not participating.

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Franzia Winery LLC, AWG Y ET 071-700011; 116604  
4-1-98 to 2-28-01, \$519,189.91

Action: Approve the refund as recommended by staff. Ms. Mandel not participating.

**SPECIAL TAXES MATTERS, REDETERMINATIONS AND RELIEF OF PENALTY, CONSENT**

With respect to the Special Taxes Matters, Redeterminations and Relief of Penalty, Consent Agenda, upon a single motion of Mr. Klehs, seconded by Mr. Parrish and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, Ms. Mandel not participating in *21<sup>st</sup> Century Insurance Company, IT ET 034-001953; 58126 and Frank-Lin Distillers Products, ADS Y ET 072-101613; 126698*, the Board made the following orders:

21<sup>st</sup> Century Insurance Company, IT ET 034-001953; 58126  
1-1-95 to 12-31-95, \$1,099,767.05

Action: Redetermine as recommended by staff. Ms. Mandel not participating.

Sellers Petroleum Products Inc., DD MT 057-250129; 56795  
11-1-95 to 8-31-97, \$86,527.53

Action: Redetermine as recommended by staff.

Frank-Lin Distillers Products, ADS Y ET 072-101613; 126698  
1-1-01 to 1-31-01, \$95,557.70

Action: Approve the relief of penalty as recommended by staff. Ms. Mandel not participating.

**PROPOSED RESOLUTION FOR CITIES OF HAWTHORNE, LOS ANGELES, PALMDALE, EL SEGUNDO, PICO RIVERA, ANAHEIM AND VENTURA**

The Board deferred consideration of this matter.

**MULTISTATE TAX COMMISSION RESOLUTIONS**

Timothy Boyer, Chief Counsel, made introductory remarks regarding the Multistate Tax Commission Resolutions (Exhibits 7.1).

Exhibits to these Minutes are incorporated by reference.

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Action: Mr. Andal moved to adopt a neutral position on Resolution 01-01. Mr. Klehs offered a substitute motion to table the Resolution. No vote was taken.

Upon motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Andal and Ms. Mandel voting yes, Mr. Klehs not voting, the Board adopted a neutral position on Resolution 01-01.

Upon motion of Mr. Andal, seconded by Mr. Parrish and duly carried, Mr. Parrish, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, Mr. Chiang voting no, the Board adopted to abstain on Resolution 01-02.

Mr. Klehs moved to support Resolution 01-03. Mr. Andal offered a substitute motion to adopt a neutral position. The motion was seconded by Mr. Parrish and duly carried, Mr. Parrish, Mr. Andal and Ms. Mandel voting yes, Mr. Chiang and Mr. Klehs voting no.

Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board adopted a support position on Resolution 01-04.

Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board adopted a support position on Resolution 01-05.

Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board adopted a support position on Resolution 01-06.

Upon motion of Mr. Andal, seconded by Ms. Mandel and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board adopted an oppose position on Resolution 01-07.

Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board adopted an oppose position on Resolution 01-08.

Upon motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board adopted an oppose position on Resolution 01-09.

Mr. Klehs moved to adopt a position of neutral on Resolution 01-10. Mr. Andal offered a substitute motion to adopt an oppose position. The motion was seconded by Mr. Parrish and unanimously carried, Mr. Parrish, Mr. Chiang and Mr. Andal voting yes, Mr. Klehs and Ms. Mandel not voting.

Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board adopted a support position on Resolution 01-11.

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Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs and Mr. Andal voting yes, Ms. Mandel abstaining, the Board adopted a support position on Resolution 01-12.

# **CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS**

Ronald F. & Catherine M. Boeddeker, 99A-0399; 18702

1993, \$1,403,751.00 Assessment

For Appellant:

Glenn Bystrom, Representative

Steve Danowitz, Representative

For Franchise Tax Board:

Bradley Heller, Tax Counsel

A. Kent Summers, Tax Counsel

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issues: Whether appellants have shown that part of the cancellation of indebtedness income (CODI) otherwise attributable to them is excludible from their gross income under Internal Code (IRC) section 108(a)(1)(D).

Whether appellants have shown that part of the CODI otherwise attributable to them is excludable from their gross income under the tax benefit rule.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 7.2)

Selvi Stanislaus, Legal Counsel, Appeals Section, Legal Division, stated for the record that the appellant had conceded as to Issue I.

Action: Upon motion of Mr. Andal, seconded by Mr. Klehs and duly carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal voting yes, Ms. Mandel voting no, the Board ordered that the appeal be granted as to Issue 2. The Board directed Appeals Section to prepare a draft Formal Legal Opinion for Board consideration.

Max Brenner, 57861

1991, \$80,233.00 Assessment

For Appellant:

Max Brenner

For Franchise Tax Board:

Terry Collins, Tax Counsel

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issue: Whether appellant was a resident of California for all or any portion of 1991. Specifically, was appellant a California resident on April 12, 1991, when he sold his shares of stock in United Confections, Inc.

Appellant's Exhibit: Voter Registration (Exhibit 7.3)

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Action: Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board ordered that the appeal be submitted for decision.

Dorothy M. Pataky & the Estate of George E. Bilbia, 79135  
1989, \$10,458.00 Assessment, \$1,580.00 Penalty, Delinquent  
1991, \$ 692.00 Assessment, \$ 173.00 Penalty, Delinquent  
1992, \$ 365.00 Assessment, \$ 100.00 Penalty, Delinquent

For Appellant:

Gary E. Reddish, Attorney  
Dorothy Pataky

For Franchise Tax Board:

Mark McEvilly, Tax Counsel

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issues: Whether appellants have met their burden to prove error in the proposed assessments, and the underlying federal actions.

Whether appellant Pataky should be granted innocent spouse relief.

Whether reasonable cause exists for relief from the delinquent return

penalties.

Appellant's Exhibit:

Miscellaneous Documents (Exhibit 7.4)

Action: Upon motion of Dr. Connell, seconded by Mr. Parrish and duly carried, Mr. Parrish, Mr. Chiang and Dr. Connell voting yes, Mr. Klehs and Mr. Andal voting no, the Board ordered that the appeal be granted.

## **CHIEF COUNSEL MATTERS, RULEMAKING**

### **PROPOSED AMENDMENT TO RULE 905, ASSESSMENT ELECTRIC GENERATION FACILITIES.**

Larry Augusta, Assistant Chief Counsel, Property Tax Division, made introductory remarks regarding proposed amendment to Rule 905, Assessment Electric Generation Facilities.

Speakers: Speakers were invited to address the Board but there were none.

Action: Upon motion of Mr. Chiang, seconded by Mr. Andal and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Dr. Connell voting yes, the Board authorized the publication of Rule 905, Assessment Electric Generation Facilities as amended by Mr. Chiang (Exhibit 7.5).



TUESDAY, JULY 10, 2001

**PROPOSED REGULATORY ACTION ON ASSESSMENT OF ARTIFICIAL SATELLITES**

Larry Augusta, Assistant Chief Counsel, Property Tax Division, made introductory remarks regarding the proposed regulatory action on Assessment of Artificial Satellites.

**PUBLIC COMMENT**

Speakers: Richard Nielsen, Attorney, Pillsbury Wintrop  
Brian Paperny, Vice President – Taxes, Huges Electrioncs  
Rich Auerbach, Assessor, Los Angeles County

Action: Dr. Connell made the following motion; that the Board find that an artificial satellite permanently located in outer space does not have a tax situs in California, and that we authorized publication of a new rule titled “Assessment of Artificial Satellites” with the following language: “An artificial satellite permanently located in outer space does not have a tax situs in this state.” I further move that we direct Staff to take the necessary steps with the Office of Administrative Law to ensure prompt publication and public hearing. The motion was seconded by Mr. Parrish and unanimously carried, Mr. Parrish, Mr. Andal and Dr. Connell voting yes, Mr. Klehs not voting, Mr. Chiang absent, the Board authorized the publication of the adoption of propose Rule, Assessment of Artificial Satellites.

Mr. Chiang and Mr. Klehs stated for the record that they would have voted with the majority regarding the adoption of the Rule, Assessment of Artificial Satellites.

**ANNOUNCEMENT OF CLOSED SESSION**

The Board recessed in closed session with Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Dr. Connell present.

**CLOSED SESSION**

The Board met to discuss personnel matters.

The Board recessed at 11:20 a.m. and reconvened at 11:45 a.m. in open session with Mr. Parrish, Mr. Chiang, Mr. Klehs and Mr. Andal present, Ms. Mandel present on behalf of Dr. Connell in accordance with Government Code Section 7.9.

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**CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS**

Fremont General Corporation, 27969

1982, \$526,796.00 Assessment

1983, \$517,441.00 Assessment

1984, \$253,482.00 Assessment

1985, \$648,463.00 Assessment

For Appellant:

Dwayne M. Horii, Attorney

Hilary C. Kinston, Attorney

For Franchise Tax Board:

Craig Swieso, Tax, Counsel

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issues: Whether appellant has shown that respondent wrongly disallowed certain deductions for interest expenses claimed by appellant.

Whether appellant has shown that respondent incorrectly calculated the amount of the disallowed interest expenses.

Appellant's Exhibit:

Miscellaneous Document (Exhibit 7.6)

Respondent's Exhibit:

Legal Ruling 385 (Exhibit 7.7)

The Board recessed at 12:05 p.m. and reconvened at 1:40 p.m. with Mr. Parrish, Mr. Chiang, Mr. Andal and Ms. Mandel present.

Upon motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board ordered that the appeal be submitted for decision, granting the Appellant and the Franchise Tax Board 30 days to submit additional documentation, then each party will be given 30 days to respond to the documentation, and then Appeals Section 30 days thereafter to bring the matter back to the Board for a final recommendation.

William &amp; Laura C. Simmons, 82055

1994, \$22,099.00

For Appellant:

William Simmons

For Franchise Tax Board:

David Gemmingen, Tax Counsel

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issue: Whether appellants have shown that respondent improperly disallowed exclusion of cancellation of debt income due to insolvency.

Appellant's Exhibit:

Hazardous Waste Records (Exhibit 7.8)

Respondent's Exhibit:

Letter (Exhibit 7.9)

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Action: Upon motion of Mr. Klehs, seconded by Mr. Parrish and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board ordered that the appeal be submitted for decision.

David K. Sclafani, 94418

1996, \$3,629.00 Assessment, \$500.00 Penalty, Frivolous Appeal

For Appellant: David K. Sclafani

For Franchise Tax Board: Jozel Brunette, Tax Counsel

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issues: Whether appellant has established that respondent's additional tax assessment (based on federal information) was erroneous.

Whether the Board has jurisdiction to consider appellant's appeal of the "frivolous return" penalty imposed by respondent.

If it is determined that the Board has jurisdiction to consider the penalty issue, whether appellant has established that the penalty should be abated.

Whether appellant has maintained a frivolous or groundless position before the Board.

Appellant's Exhibit: Letter (Exhibit 7.10)

Action: Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board ordered that the appeal be submitted for decision.

Theodore M. Johnson, 88998

1993, \$5,156.00 Assessment

For Appellant: No Appearance

For Franchise Tax Board: Richard Gould, Tax Counsel

Action: The Board took no action.

James & Jeannette Radney, 99A-0025; 89002465520

1992, \$28,411.00 Assessment

For Appellant: Marshall W. Taylor, Attorney

James C. Radney

Jeannette K. Radney

For Franchise Tax Board: Bruce Langston, Tax Counsel

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issues: Whether appellants have met their burden to prove error in the proposed assessment, or the underlying federal action.

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Whether appellants completed nontaxable rollovers of their retirement plan distributions.

Whether appellants can offset a theft loss against taxable early retirement plan distributions.

Action: Upon motion of Mr. Chiang, seconded by Mr. Andal and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board ordered that the appeal be granted.

The Board recessed at 2:50 p.m. and reconvened at 3:10 p.m. with Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel present.

#### **FINAL ACTION ON APPEALS HEARD JULY 10, 2001**

Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board ordered that the appeal of *Max Brenner, 57861*, be denied, sustaining the action of the Franchise Tax Board.

Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board ordered that the appeal of *William & Laura C. Simmons, 82055*, be denied, sustaining the action of the Franchise Tax Board.

Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board ordered that the appeal of *David K. Sclafani, 94418*, be denied, sustaining the action of the Franchise Tax Board and imposing a \$750.00 frivolous appeals penalty.

#### **BUSINESS TAXES APPEALS**

Sidney M. Simmons, SR AC 13-095992; 89000057360

10-1-95 to 6-30-98, \$00.00 Tax, \$00.00 Penalty, Negligence

For Petitioner: Sidney M. Simmons

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issue: Whether relief from the interest charges is warranted.

Action: Upon motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Parrish, Mr. Chiang and Mr. Andal voting yes, Ms. Mandel not participating,

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Mr. Klehs absent, the Board ordered that the petition be redetermined as recommended by the Appeals Section. The Board directed staff to assist petitioner with a Board of Control Claim and write a letter in support of the petitioners claim.

Borders Online, Inc., SC OHA 97-638364; 56270

4-1-98 to 9-30-99, \$131,212.07 Tax, \$00.00 Penalty, Failure to File

For Petitioner: Scott L. Brandman, Attorney

For Sales and Use Tax Department: David Levine, Counsel

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issue: Whether petitioner had a sufficient physical presence in California during the period at issue to meet the nexus requirements under the Commerce Clause of the United States Constitution, thereby allowing California to impose a use tax collection obligation on petitioner.

Action: Upon motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision; directing the Appeals Section to bring the matter back to the Board in 30 days.

The Mr. Andal directed Appeals Section to draft a memorandum opinion.

Francisco J. & Ana Maria Rodriguez, SX AS 12-670112; 89000044040

4-1-92 to 6-30-95, \$38,045.39 Assessment, \$00.00 Penalty

For Petitioner: Francisco Rodriguez

Ana Marie Rodriguez

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issues: Unspecified.

Action: Upon motion of Mr. Chiang, seconded by Mr. Parrish and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board ordered that the petition be redetermined in accordance with the revised recommendation of the Appeals Section.

Upon the motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board submitted the petition for decision; granting the petitioner 30 days to provide additional documentation, the Department 30 days to review the documentation and the Appeals Section 30 thereafter to bring the matter back to the Board with a final recommendation.

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Letter Excellence, Inc., SR AC 13-827269; 89000084890

1-1-95 to 9-30-97, \$7,165.51 Assessment

SR AC 13-827269; 89000084880

1-1-95 to 9-30-97, \$ 7,165.51 Claim for Refund

For Petitioner: Daniel Bennett, President, CEO  
Patrick J. Leone, CPA

For Sales and Use Tax Department: David H. Levine, Counsel

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issues: Whether petitioner has provided sufficient documentation to support its contention that alleged excess tax reimbursement mistakenly collected on exempt printed sales messages should be offset by untaxed items (deemed to be taxable) for the same customers on the same transactions.

Action: Upon motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board ordered that the petition of *SR AC 13-827269; 89000084880* be granted, contingent upon meeting the requirements of Regulation 1700.

Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board ordered that the petition of *SR AC 13-827269; 89000084890* be redetermined as recommended by the Appeals Section.

Ian Phillips Interiors, Inc., SR AC 13-110166; 30642

7-1-94 to 3-31-98, \$45,792.01 Tax

For Petitioner: Ian Phillips

For Sales and Use Tax Department: David H. Levine, Counsel

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issues: Whether the measure of tax was established in accordance with the facts.

Whether the Department properly disallowed as a credit the excess of reported taxable measure over audited taxable measure in the first reporting period after changing petitioner from a cash basis to an accrual basis reporting method.

Action: Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Rockin'Horse, Inc., SR AS 18-626706; 89000230170

4-1-94 to 3-31-97, \$00.00 Tax, \$00.00 Penalty

For Petitioner: Waived Appearance

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For Sales and Use Tax Department: Jeffery H. Graybill, Counsel  
Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issue: Whether the statute of limitation has not expired with respect to filing a claim for refund for net credits resulting from a reaudit, because there is a valid petition and the determination is not final.

Action: Upon motion of Mr. Klehs, seconded by Mr. Andal and duly carried, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, Mr. Chiang voting no, Mr. Parrish abstaining, the Board ordered that the petition be redetermined as recommended by the Appeals Section.

Mark M. Kasif (deceased) & Gilbert Kasif, SR AC 52-005431; 16817  
4-1-94 to 9-30-97, \$62,320.30 Tax,  
\$31,160.09 Penalty, Operating without a Seller's Permit  
\$ 6,232.03 Penalty, Failure to File

For Petitioner: Richard Brickman, Attorney

For Sales and Use Tax Department: Jeffery H. Graybill, Counsel

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issues: Whether taxpayer, Gilbert Kasif, was an employee, rather than a partner of the business.

Whether relief from the penalties for knowingly operating without a valid seller's permit and for failure to file returns is warranted.

Action: Mr. Parrish moved to redetermined as recommended by the Appeals Section and delete the failure to file penalty. The motion was seconded by Mr. Andal but failed to carry, Mr. Parrish and Mr. Andal voting yes, Mr. Klehs, Mr. Chiang and Ms. Mandel voting no.

Mr. Klehs moved to redetermine. No vote was taken.

Upon motion of Mr. Chiang, seconded by Mr. Andal and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

#### **FINAL ACTIONS HEARD ON JULY 10, 2001**

Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board ordered that the petition of *Ian Phillips Interiors, Inc., SR AC 13-110166; 30642*, be redetermined as recommended by the Appeals Section, directing staff to offer a generous payment plan.

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Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board ordered that the petition of *Mark M. Kasif (deceased) & Gilbert Kasif*, SR AC 52-005431; 16817, be redetermined as recommended by the Appeals Section.

**BUSINESS TAXES APPEALS HEARINGS**

William P. Hoover, SB UT 82-675818; 35955

7-31-98, \$8,338.00 Tax

For Petitioner:

William P. Hoover

For Sales and Use Tax Department:

Sharon Jarvis, Counsel

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issue: Whether petitioner purchased the vessel for use in California.

Action: Upon motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

SWG Enterprises, Inc., SR AC 99-455027; 89002263140

4-1-94 to 6-30-97, \$69,267.51 Tax, \$18,721.52 Penalty, Negligence

For Petitioner:

No Appearance

For Sales and Use Tax Department:

Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issues Whether the evidence shows that some of the unreported taxable sales are in fact nontaxable sales for resale and exempt sales in interstate commerce.

Whether relief from the negligence penalty is warranted.

Action: Upon motion of Mr. Andal, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Mr. Andal and Ms. Mandel voting yes, Mr. Parrish abstaining, Mr. Klehs absent, the Board ordered that the petition be redetermined as recommended by the Appeals Section.

Eric Eugene Wachter, SR AR 13-750502; 29930

10-1-95 to 6-30-98, \$14,778.54 Tax, \$00.00 Penalty, Negligence

For Petitioner:

Eric Wachter

Richard Bates, CPA

Gary Leiper, CPA

Helyne Gallup, Office Manager



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For Sales and Use Tax Department: Kevin Hanks, Hearing Representative  
Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issue: Whether the evidence shows that the audited pour size for liquor and wine should be increased.

Action: Upon motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Parrish, Mr. Chiang and Mr. Andal voting yes, and Ms. Mandel abstaining, Mr. Klehs absent, the Board ordered that the disputed taxable measure be reduced 20%; otherwise redetermine as recommended by the Appeals Section.

Joseph Antonelli & Kevin W. Posey, SB UT 82-679825; 48115  
12-31-98, \$4,125.00 Tax

For Petitioner: No Appearance

For Sales and Use Tax Department: Sharon Jarvis, Counsel

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issues: Whether petitioners' claim that the vessel was purchased with the intent to charter the vessel for deep-sea fishing warrants relief from the tax.

Alternatively, whether the facts prove that the vessel was used 50 percent or more of the time outside the territorial waters of the state.

Action: Upon motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Andal and Ms. Mandel voting yes, Mr. Klehs absent, the Board ordered that the petition be redetermined as recommended by the Appeals Section.

Von A. Gentile, SB UT 82-663641; 50595  
3-31-98, \$1,400.00 Tax, \$00.00 Penalty, Failure to File

For Petitioner: Von A. Gentile

For Sales and Use Tax Department: Sharon Jarvis, Counsel

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issues: Whether petitioner was the purchaser of the vessel.

Whether relief from the accrual of interest is warranted.

Action: Upon motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Andal and Ms. Mandel voting yes, Mr. Klehs absent, the Board ordered that the petition be submitted for decision.

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Princeton Club, Inc., SR AA 97-163018; 15471

11-1-90 to 1-31-98, \$696,049.97 Tax, \$ 69,604.93 Penalty, Failure to File  
\$174,012.74 Penalty, Fraud

Tsutomu Mogi, SR AA 52-008212; SR AA 52-008212; 15470

11-1-90 to 1-31-98, \$696,049.97 Tax, \$ 69,604.93 Penalty, Failure to File  
\$174,012.74 Penalty, Fraud

For Petitioner: Tsutomu Mogi

For Sales and Use Tax Department: David H. Levine, Counsel

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issues: Whether petitioners' allegations that Princeton Club, Inc., was not the owner of the business, even if true, would preclude Princeton's sales tax liability as a retailer making retail sales of tangible personal property.

Whether petitioner Mogi was a responsible officer of Princeton, a defunct corporation, thereby incurring a dual sales tax liability.

Whether the 25 percent fraud penalty should be abated.

Whether relief from the 10 percent penalty for failure to file returns is warranted.

Action: Upon motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Andal and Ms. Mandel voting yes, Mr. Klehs absent, the Board ordered that the petition be submitted for decision.

### **FINAL ACTION ON PETITIONS HEARD JULY 10, 2001**

Upon motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Andal and Ms. Mandel voting yes, Mr. Klehs absent, the Board ordered that the petition of *William P. Hoover, SB UT 82-675818; 35955*, be redetermined as recommended by the Appeals Section.

Upon motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Andal and Ms. Mandel voting yes, Mr. Klehs absent, the Board ordered that the petition of *Von A. Gentile, SB UT 82-663641; 50595*, be redetermined as recommended by the Appeals Section.

Upon motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Andal and Ms. Mandel voting yes, Mr. Klehs absent, the Board ordered that the petition of *Princeton Club, Inc., SR AA 97-163018; 15471 and Tsutomu Mogi, SR AA 52-008212; SR AA 52-008212; 15470*, be redetermined as recommended by the Appeals Section.

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The Board adjourned at 6:25 p.m.

*The foregoing minutes are adopted by the Board on September 13, 2001.*

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